

a FUJITSU COMPUTER SYSTEMS (M) SDN BHD & ANOR

v.

NORDIN MD YASIN & ANOR

b HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[APPLICATION NO: R1-25-33-2002]
30 DECEMBER 2003

c *LABOUR LAW: Employment - Dismissal - Backwages - Principles in assessing - Claimant gainfully employed elsewhere soon after his dismissal - Remuneration received from new employment - Whether must be deducted from or set off against backwages to be awarded - Whether chairman considered such factors - Whether chairman exercised discretion properly - Whether High Court has reason to interfere*

d This was an application by the employer/company for an order of *certiorari* to quash the award of the Industrial Court handed down earlier in favour of the employee/claimant. The Industrial Court had found the claimant's dismissal to be without just cause and excuse and had awarded him compensation comprising: (i) 24 months' backwages amounting to RM376,800; and (ii) loss of employment for five years' service amounting to RM78,500. Before the learned judge, it was submitted, citing the decision of the Federal Court in *Dr James Alfred (Sabah) v. Koperasi Serbaguna Sanya Bhd (Sabah) & Anor* [2001] 3 CLJ 541, that the learned chairman should not have awarded the claimant backwages of up to 24 months as he has been gainfully employed elsewhere just three months after his dismissal.

f **Held (dismissing the company's application):**

g **[1]** It was fairly clear from the award of the Industrial Court that the learned chairman had, in coming to his decision, taken into account the fact that the claimant was gainfully employed elsewhere soon after his dismissal from the company. Indeed, the learned chairman had considered and applied the relevant principle enunciated in the aforesaid Federal Court decision. That was why the claimant was not awarded the actual 43 months of backwages but only 24 months. The learned chairman had exercised his discretion properly and appellate interference would, in the circumstances, be quite unwarranted. (p 488 a-c)

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[Certiorari refused.]

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Case(s) referred to:

Dr James Alfred (Sabah) v. Koperasi Serbaguna Sanya Bhd (Sabah) & Anor [2001] 3 CLJ 541 FC (refd)

For the applicants/company - CP Lee; M/s Azman, Davidson & Co

For the respondents/claimant - LG Seah (Angeline Low); M/s Lobo & Assoc

Reported by Gan Peng Chiang

JUDGMENT

Raus Sharif J:

This is an application by the applicant for an order of *certiorari* to quash the Industrial Court's Award of No. 141 of 2002. The Industrial Court had found that first respondent was dismissed without just cause or excuse and accordingly ordered the applicants to pay the first respondent the following compensation package by way of monetary benefits in the following terms:

(a) Back wages RM15,700 times 24 months	–	RM376,800.00
(b) Compensation for loss of Employment @ RM15,700 times 5 years of service	–	RM 78,500.00

Total	–	RM455,300.00
Less	–	RM 60,839.09

Total balance	–	RM394,460.91
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At the hearing before me, the applicant raised the only issue of back wages. It was submitted by the applicant that since the first respondent was gainfully employed three months after his termination, he should not be entitled to more than three months of back wages. The case of *Dr. James Alfred (Sabah) v. Koperasi Serbaguna Sanya Bhd. (Sabah) & Anor. [2001] 3 CLJ 541* was cited to support the argument. In that case Steve Shim CJ (Sabah & Sarawak) stated as follows:

In our view, it is in line with equity and good conscience that the Industrial Court, in assessing quantum of back wages, should take into account the fact, if established by evidence or admitted, that the workmen has been gainfully employed elsewhere after his dismissal. Failure to do so constitutes a jurisdictional error of law. *Certiorari* will therefore lie to rectify it.

- a* From the written award of the Industrial Court, it is clear that it has been taken into account that the respondent has been gainfully employed elsewhere after his dismissal. The learned Chairman stated as follows:

- b* The general guide stated in *Alfred James's* case is, of course, to put some limit to the question of back wages in order to take account of the fact that for any period of gainful employment elsewhere, an amount ought to be deducted in the compensation of the back wages won by the employee for the unjust dismissal.

- c* The learned Chairman then, applying the principle in the case of *Dr. James Alfred*, awarded only 24 months of back wages instead of the actual 43 months. I am of the view that the award of 24 months of back wages was within the discretion of the Industrial Court. In exercising its discretion the Industrial Court had taken into account that the first respondent has been gainfully employed elsewhere after his dismissal. I have no reason to interfere.

- d* Accordingly, the applicants' application is dismissed with costs.
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